

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
BAY CITY DIVISION**

**CASE NO.: 1:23-cv-12810**

MORGAN HOWARTH,

Plaintiff,

v.

BLUE THUMB DISTRIBUTING, INC.,

Defendant,

**COMPLAINT FOR COPYRIGHT INFRINGEMENT  
(INJUNCTIVE RELIEF DEMANDED)**

Plaintiff MORGAN HOWARTH by and through his undersigned counsel, brings this Complaint against Defendant BLUE THUMB DISTRIBUTING, INC. for damages and injunctive relief, and in support thereof states as follows:

**SUMMARY OF THE ACTION**

1. Plaintiff MORGAN HOWARTH (“Howarth”) brings this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute Howarth's original copyrighted Work of authorship.

2. With his signature style, Morgan Howarth creates art out of space using carefully coordinated compositions and lighting. The rich and illustrative look in his architecture photos comes from meticulously combining a multitude of separately lit images into one perfect shot. No matter what, Howarth is willing to take on the challenge; such as turning night into day, winter into summer and dull into exciting. And when it comes to bringing out a space’s true personality and details, there is no one better. Throughout his lengthy career, Morgan has photographed hundreds of interiors and exteriors for a host of clients - and has loved every

minute of it. Photography has exposed Morgan to beautiful places and creative people, but he still considers the best part of any assignment to be that final "Wow!" from a client.

3. Defendant Blue Thumb Distributing, Inc. owned and operated the internet website located at the URL [www. bluethumbponds.com](http://www.bluethumbponds.com) (the "Website").

4. Howarth alleges that Defendant copied Howarth's copyrighted Work from the internet in order to advertise, market and promote its business activities. BTD committed the violations alleged in connection with Defendant's business for purposes of advertising and promoting sales to the public in the course and scope of the BTD's business.

### **JURISDICTION AND VENUE**

5. This is an action arising under the Copyright Act, 17 U.S.C. § 501.

6. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a).

7. Defendant is subject to personal jurisdiction in Michigan.

8. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in this district, BTD engaged in infringement in this district, BTD resides in this district, and BTD is subject to personal jurisdiction in this district.

### **DEFENDANT**

9. Blue Thumb Distributing, Inc. is a Michigan corporation with its principal place of business at 2650 Schust Rd Saginaw, MI 48603 and can be served by serving its Registered Agent, Kristopher W. Northrup at 2650 Schust Rd Saginaw, MI 48603.

**THE COPYRIGHTED WORK AT ISSUE**

**10.** In 2019, Howarth created the photograph entitled “927\_Hickory\_Pond\_Fire\_F.jpg,” which is shown below and referred to herein as the “Work”.



**11.** Howarth registered the Work with the Register of Copyrights on September 14, 2019, and was assigned registration number VA 2-174-311. The Certificate of Registration is attached hereto as **Exhibit 1**.

**12.** Howarth's Work is protected by copyright but was not otherwise confidential, proprietary, or trade secrets.

**13.** At all relevant times Howarth was the owner of the copyrighted Work at issue in this case.

**INFRINGEMENT BY BTD**

**14.** BTD has never been licensed to use the Work at issue in this action for any purpose.

**15.** On a date after the Work at issue in this action was created, but prior to the filing of this action, BTD copied the Work.

**16.** On or about August 29, 2022, Howarth discovered the unauthorized use of his Work on the Website.

**17.** BTD copied Howarth's copyrighted Work without Howarth's permission.

**18.** After BTD copied the Work, it made further copies and distributed the Work on the internet to promote the sale of goods and services as part of its pond business.

**19.** BTD copied and distributed Howarth's copyrighted Work in connection with Defendant's business for purposes of advertising and promoting Defendant's business, and in the course and scope of advertising and selling products and services.

**20.** Howarth's Work is protected by copyright but is not otherwise confidential, proprietary, or trade secrets.

**21.** BTD committed copyright infringement of the Work as evidenced by the documents attached hereto as **Exhibit 2**.

**22.** Howarth never gave Defendant permission or authority to copy, distribute or display the Work at issue in this case.

**23.** Howarth notified BTB of the allegations set forth herein on October 27, 2022. To date, the parties have failed to resolve this matter.

**COUNT I**  
**COPYRIGHT INFRINGEMENT**

~~24~~ Howarth incorporates the allegations of paragraphs 1 through 23 of this Complaint as if fully set forth herein.

~~25~~ Howarth owns a valid copyright in the Work at issue in this case.

~~26~~ Howarth registered the Work at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

~~27~~ BTD copied, displayed, and distributed the Work at issue in this case and made derivatives of the Work without Howarth's authorization in violation of 17 U.S.C. § 501.

~~28~~ BTD performed the acts alleged in the course and scope of its business activities.

~~29~~ Defendant's acts were willful.

~~30~~ Howarth has been damaged.

~~31~~ The harm caused to Howarth has been irreparable.

WHEREFORE, the Plaintiff MORGAN HOWARTH prays for judgment against the Defendant BLUE THUMB DISTRIBUTING, INC. that:

a. BTD and its officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. § 501;

b. BTD be required to pay Howarth his actual damages and Defendant's profits attributable to the infringement, or, at Howarth's election, statutory damages, as provided in 17 U.S.C. § 504

c. Howarth be awarded his attorneys' fees and costs of suit under the applicable statutes sued upon;

d. Howarth be awarded pre- and post-judgment interest; and

e. Howarth be awarded such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Howarth hereby demands a trial by jury of all issues so triable.

DATED: November 5, 2023

Respectfully submitted,

/s/ Joseph A. Dunne  
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